

Resolving the Ownership Status of Companies in War-Damaged Areas of Croatia



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1 Background and Introduction

Poor execution of the privatization process and a prolonged economic crisis has resulted in many of the previously state-owned assets of companies in ECRA municipalities continuing to be in the ownership of the Croatian Privatization Fund (CPF). In general, most of these facilities are in a state of disuse and disrepair and in many cases, no active production is foreseen without first resolving the ownership of assets in the war-affected areas, followed by an injection of capital or the involvement of a major strategic partner. FI, in the context of the USAID-supported return and reintegration program, has an active interest in revitalizing the facilities to create income and employment opportunities for local residents that will contribute to the process of refugee return and reintegration.

In order to revive the economies of war-damaged areas of Croatia by investing in and developing non-productive assets in those regions, it is first necessary to determine the ownership status of the assets and real estate. This is not as simple or straightforward as it may initially seem. The current bureaucratic procedures required in order to determine the ownership of the liquidated assets of former companies from these municipalities is not so much complicated as non-existent. These procedures have been devised rather simply, based on the experience of investigating the ownership of three key former-companies, but are only as stable as the underlying political situation on which they are built. As the Croatian government undergoes various transitional adjustments, the procedures which have been effective would need to be similarly adjusted and should therefore be interpreted as flexible. The legal system in which company and asset ownership is interpreted is a solid but slowly-maneuvered network. While the framework required to legally identify ownership status is firmly established, maneuvering through this system can be a tedious process.

FI is coordinating revitalization efforts for most of the pre-war enterprises in the area with the Bankruptcy Court in Karlovac. However, there are a number of enterprises that have apparently been liquidated and are still (according to the municipality and local residents) in the legal possession of the CPF. They therefore do not fall under the purview of the Court, which is disposing of most non-functioning assets in Lapac.

The purpose of this report is to provide whatever assistance possible to resolve these ownership issues. FI intends to attempt to secure donor financing for the reconstruction of viable assets and then to engage in whichever form of ownership transfer is most suitable to stimulate economic revitalization efforts. Until now, there had been no demonstrated demand for assets in this position, and therefore no urgent need for a transparent process to resolve their ownership and thereby enable their sale. However, despite the potential time requirements and formidable obstacles involved in this undertaking, there has been a definite appreciation of the stated goal, and a positive amount of assistance from every government official contacted in the past month of meetings and research.

2 Discovery Process

The process of investigating the ownership of the liquidated assets of three former companies from the Donji Lapac area highlighted the key institutions and personnel whose involvement is essential for successfully identifying the assets' ownership and subsequently carrying out their disposal.

The ownership of the following assets have been investigated:

- Assets from Tourism Company Kamensko:
 - Hotel Kamensko located in the center, totally destroyed
 - Hotel Nebljuši located in Nebljuši village north of Lapac, undamaged
 - Hotel Ozeblin located near the municipal building, somewhat destroyed
 - Production Building located in Donji Lapac
- Assets from Mercantile Company UNA:
 - Over 30 retail stores located in and around Donji Lapac, many damaged
 - Warehouse located in central Donji Lapac, limited damaged
- Assets from Transportation Company Likatrans:
 - Building in town

Each of the institutions mentioned has been either directly or indirectly (through a third party) contacted in the course of the research process. These institutions include:

- The Croatian Privatization Fund, Zagreb
- The State Office for Asset Management, Zagreb
- The Commercial Court, Karlovac

In these institutions there has been a significant number of employees who have answered questions and provided documents and advice during the last month. While it is not necessary to mention all of them here, a few people have been and will continue to be absolutely vital to the success of this project.

These individuals include:

- Davor Marijić, Croatian Privatization Fund, Privatization Department, Chief of the Division for Sales of Shares by Public Tender
- Ivan Kovačev, Croatian Privatization Fund, Privatization Department, Chief of the Division for Sales of Real Estate
- Draženka Meničanin, State Office for Asset Management, Deputy to the President

At this point, contact with the Commercial Court in Karlovac has been conducted through the Privatization Fund. Should it become necessary or beneficial to establish a direct route of communication with the Court, that interaction will most likely come about without difficulty and be expedited by the Fund.

3 The Croatian Privatization Fund

3.1 Stated mission and strategic focus

The Croatian Privatization Fund (CPF) was founded in 1993 for the purpose of transforming former socially-owned enterprises into state-owned enterprises, implementing the privatization of assets and companies in its portfolio, and supervising the management of assets and companies in which state institutions hold shares. These state institutions, whose shares are included in the CPF's portfolio, include the State Agency for Bank Rehabilitation and Guarantee of Saving Deposits (DAB), the Croatian Pension Insurance Institute (HZMO), the Croatian Health Insurance Institute (HZZO), Croatian Electric Company (HEP), INA, and the Croatian Bank for Reconstruction and Development (HBOR).

According to the Fund's former president Hrvoje Vojković, as stated in a presentation he made last March, the CPF's declared agenda is to proceed with the privatization of public utility companies, the remaining large industrial state enterprises, tourist complexes, and companies in the banking and insurance sector. The Fund has primarily chosen to focus on the privatization of large companies which would bring a significant amount of private investment into the country. Although the disposal of relatively small and unproductive assets and real estate from war-damaged areas does not coincide with the strategic focus of the CPF, there is a fundamental policy of handling a specific company or asset when a potential investor shows interest.

3.2 Organization and management of the Fund

The Croatian Privatization Fund is led by the president and his or her deputy. Since the former president, Hrvoje Vojković, was appointed Minister of the Economy, the deputy president, Krešimir Starčević, has been fulfilling that role on a temporary basis until the government appoints a new CPF President. The Fund also has a Supervisory Board of nine government-appointed members which supervises the legality of the CPF's operations, reviews its financial plan and annual operating statements and submits a report on its operations to the Croatian Parliament.

There is also a Management Board with five government-appointed members. The responsibilities of this board include determining the CPF's operational policy, making decisions on the sale of shares and business interests, making decisions to restructure or incorporate companies, purchasing and selling companies, and preparing the CPF's financial plan and annual financial statement.

The Management Board is currently made up of the following individuals:

- Slavko Linić, Vice-President of the Government for Economy, President of Management Board
- Hrvoje Vojković, Minister of Economy
- Mato Crkvenac, Minister of Finance
- Pave Župan Rusković, Minister of Tourism

- Božidar Pankretić, Minister of Agriculture and Forestry

The CPF has five Vice-Presidents who each oversee one of the five sectors in the Fund. These individuals and their sectors are:

- Ruđer Friganović, Corporate Governance Department
- Krešimir Starčević, Privatization Department
- Nataša Badovinac, Legal Affairs Department
- Branka Grlica, Finance Department
- Justina Bajt, Administrative and Personnel Department

The two most important departments for the purposes of this project are the Corporate Governance and the Privatization Departments. These are described more in depth in the following sections.

3.3 Framework for identifying ownership of a company or assets/real estate

In theory, determining if the CPF is the owner of a specific company or asset is as easy as calling one of its sixteen regional branches. Each of these offices has at least one employee who is responsible for carrying out the Fund's interest in that region.

Table 1: Local Branches of Corporate Governance Sector

| County Seat | Advisor | Address | Telephone | Fax |
|-------------|----------------|-------------------------------------------------|-------------------------------|--------------|
| Bjelovar | Ankica Majetić | 4300 Bjelovar Preradovićeve 4 | 043/ 241-485 043/ 242-055 | 043/ 241-486 |
| Čakovec | Stjepan Novak | 40000 Čakovec Park R. Krokepa 1 (P.P 117) | 040/ 311-703 099/ 502-585 | 040/ 311-703 |
| Dubrovnik | Kate Jelavić | 20000 Dubrovnik Petilovrijenci 2 | 020/ 321-027 098/ 285-665 | 020/ 321-026 |
| Gospić | Zrinka Mraović | 53000 Gospić Nikole Tesle 1 | 053/ 575-286 091/ 5047-541 | 053/ 574-410 |
| Karlovac | Štefica Banda | 47000 Karlovac Domobranska 6 | 047/ 611-245 091/ 5382-594 | 047/ 611-735 |
| Koprivnica | Željko Šalamon | 48000 Koprivnica Tarašćice 20 | 048/ 621-008 098/ 700-406 | 048/ 621-008 |
| Pregrada | Zlatko Kantoci | 49218 Pregrada J.K. Tuškana 2 | 049/ 376-248 091/ 517-628 | 049/ 376-247 |

| | | | | |
|------------|-----------------|------------------------------------------------------------------------|----------------------------------------------|------------------------------|
| Pula | Vladimir Žmak | 52100 Pula Sv. Teodora 2 (P.P. 214) | 052/ 213-607 | 052/ 213-524 |
| Rijeka | Franjo Švob | 51000 Rijeka Riva 8 (Zgrada “Croatia Line”) | 051/ 213-056 099/ 486-762 | 051/ 213-569 051/ 213-060 |
| Sisak | Jelica Ofak | 44000 Sisak Rimska 29 (Zgrada “Pristanište i Skladišta d.d. Sisak”) | 044/ 523-133 | 044/ 524-830 |
| Split | Joško Ivačić | 21000 Split Hrvojeva 1 | 021/ 345-986 091/ 1881-623 | 021/ 345-986 |
| Šibenik | Ante Baranović | 22000 Šibenik P. Grubišića 2 (P.P. 144) | 022/ 218-786 | 022/ 218-786 |
| Varaždin | Snježana Đundek | 42000 Varaždin A. Stepinca 9/1 | 042/ 210-883 042/ 210-873 098/ 268-304 | 042/ 312-648 |
| Vinkovci | Zvonko Rac | 32100 Vinkovci Glagoljska ulica 16 | 032/ 334-440 098/ 269-091 | 032/ 331-605 |
| Virovitica | Zvonko Rakhel | 33000 Virovitica Trg Kralja Tomislava 6/1 | 033/ 726-560 | 033/ 726-560 |
| Zadar | Sonja Peričić | 23000 Zadar Liburnska Obala 6 | 023/ 250-342 091/ 5203-639 | 023/ 250-800 |

Source: Croatian Privatization Fund

However, these branches may be closing in the near future. If the regional office is closed, any potential investor can call the Fund in Zagreb directly. In most situations, if the ownership status of the company or asset in question is at the Fund, the potential investor can be given that information immediately, along with any relevant additional data (i.e. number of shares held, registered activities of the company).

If the Fund cannot quickly identify the company or asset as being in its portfolio, or if the Fund does not in fact have ownership, the process of ownership identification begins. The first step to this process is contacting the appropriate employee in the Corporate Governance Department at the Fund who is most familiar with the region where the company or asset is located. Previously, this department was organized along regional lines. The employees which were directly responsible for the management of the Fund’s portfolio in each region is shown in the table below.

Table 2: Former Structure of Corporate Governance Department- by region

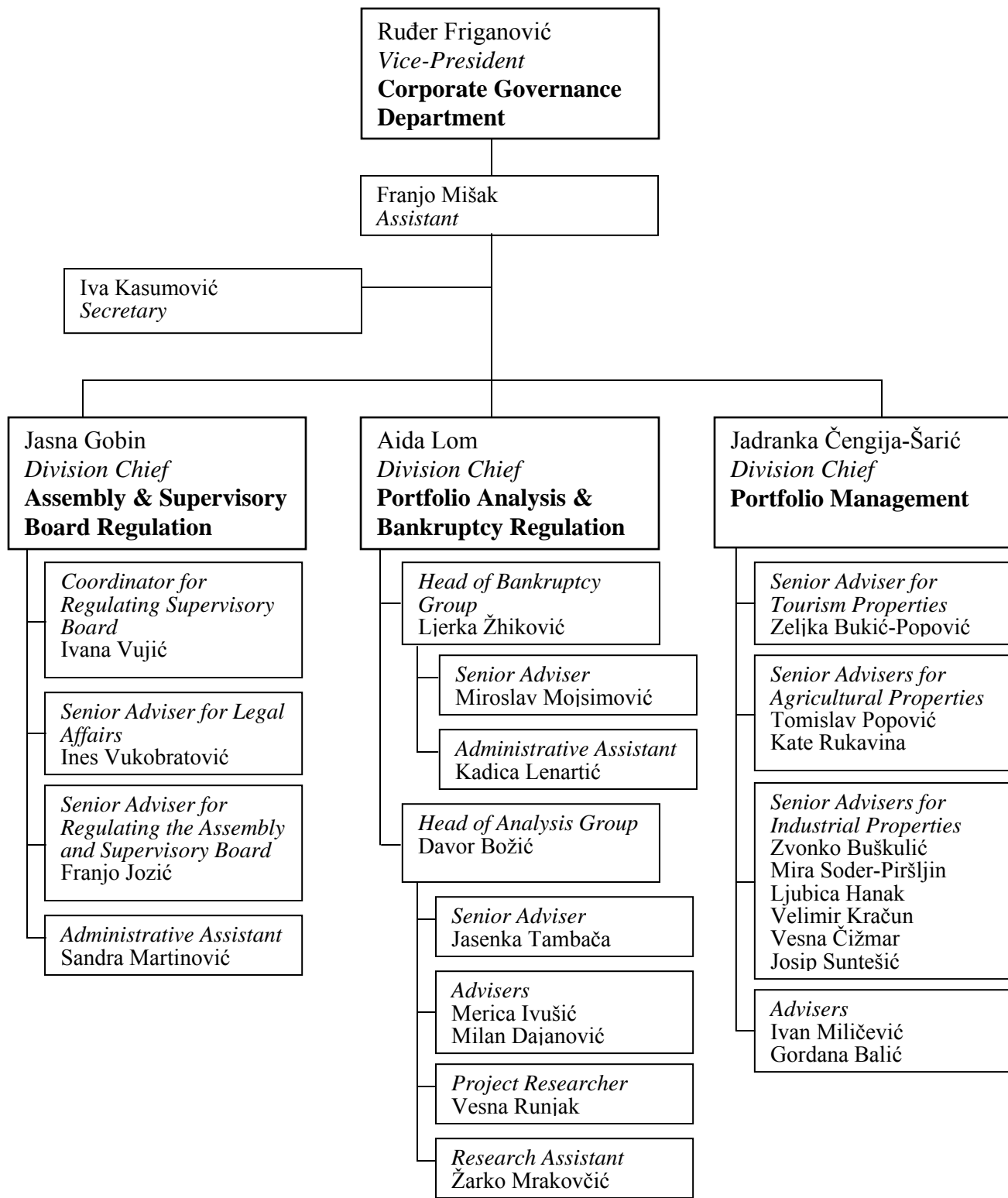
| Coordinator | Region |
|---------------------------|------------------------------------------------------------------|
| Mrs. Balić | Vukovar- Srijeme Koprivnica-Krizevacka Bjelovar-Bilogorska |
| Mrs. Bukić | Split- Dalmatia |
| Mr. Buškulić | Primorska- Goranska |
| Mrs. Čižmar | Istria Karlovac |
| Mrs. Gobin | Krapina- Zagorje |
| Mrs. Hanak | Brodsko-Posavska Šibenik-Knin |
| Mr. Kračun | Zadar Region |
| Mr. Miličević | Virovitica-Podravska Sisak-Moslavacka |
| Mr. Popović Mrs. Šarić | Osijek-Baranja Dubrovnik- Neretva |
| Mrs. Rukavina | Pozesko-Slavonija Varaždin |
| Mr. Suntešić | Lika-Senj Međimurska |

Source: Croatian Privatization Fund

These individuals represent the Fund's best source of information on companies or assets of questionable status. They can be contacted directly at CPF Headquarters in Zagreb.

In the past few months, the Corporate Governance Department underwent a restructuring period. Currently, the Department is organized into three divisions with each employee having specific duties within a certain industry. However, it is not likely that this structure is permanent. The Fund is in the process of restructuring this department again and the new format is expected presently. When the Corporate Governance Department begins operations under a new structure, as well as when any of the other information in this report is no longer valid, an amendment with the new information will be added to this report. The current, although temporary, structure is shown in the following chart.

Chart 1: Current Organization of Corporate Governance Department



Source: Croatian Privatization Fund

3.4 Sale and disposal of companies and assets/real estate

The Privatization Department at the CPF is responsible for the sale and disposal of every company and piece of real estate in the Fund's portfolio. Within this department are three divisions: Sale of Shares by Public Tender, Sale of Real Estate and Legal Affairs. After identifying the Fund as the owner of the company or asset in question, the Privatization Department is responsible for transferring its ownership to the private sector. The CPF has developed 10 different models for privatization. Four of these models involve the allocation of free shares to entitled people such as invalids, families of war veterans, individuals who lost property during the communist regime, and the debtors of companies in need of rehabilitation. The remaining six models are privatization through:

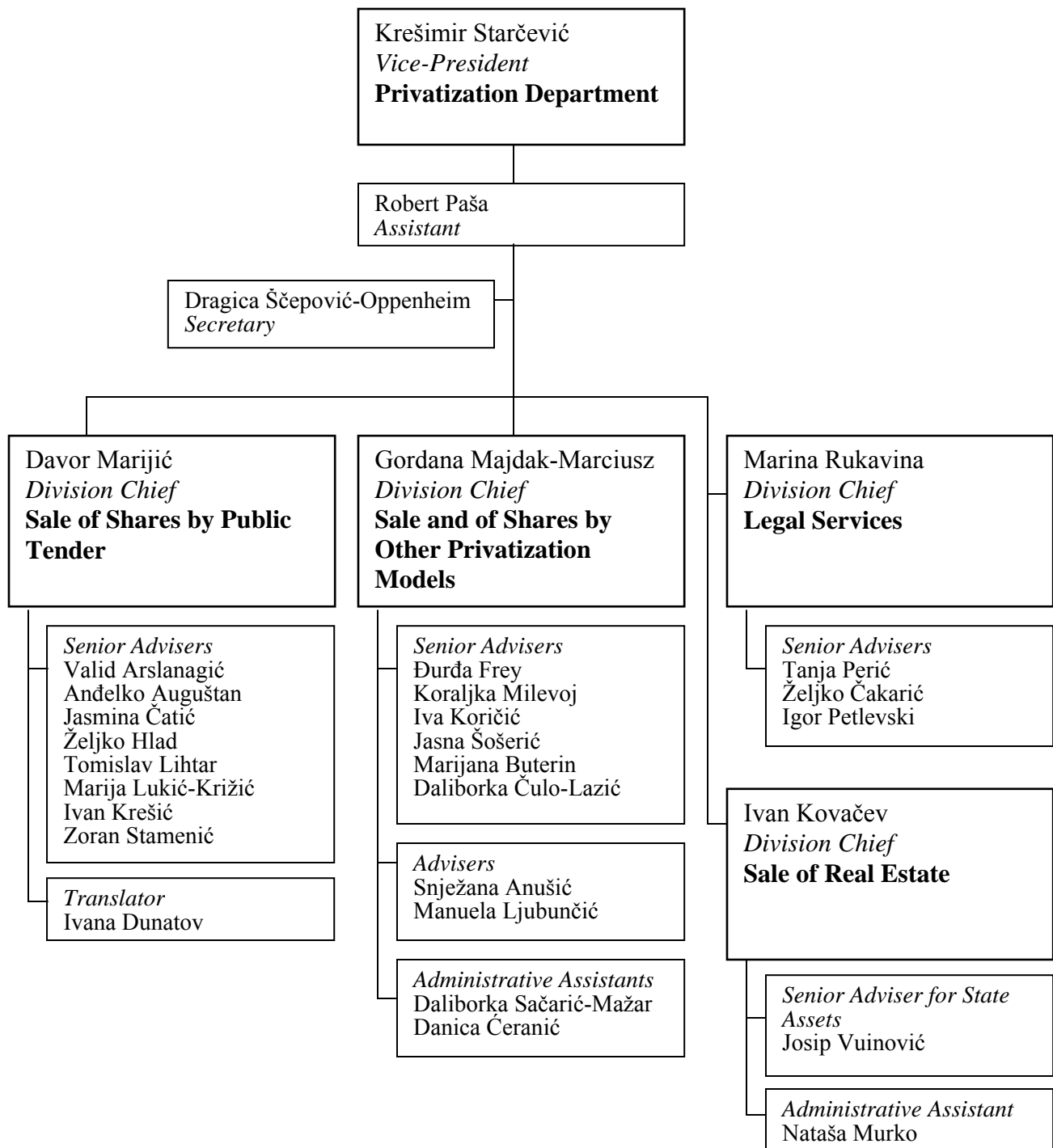
- Public Tender
- Public Auction (on the Zagreb Stock Exchange)
- Sale of discounted shares to employees and former employees
- Engagement of a privatization consultant
- Bankruptcy
- Worker's shareholding

Certain models are more suitable for some companies than others and every aspect of the company and its situation is considered when deciding which model to use. In the past, the most used form for privatization has been the simple allocation of shares to entitled people. However, this model has received some valid criticism and has understandably become less popular. Currently, privatization through public tender or through public auction are considered the optimal choices.

The process of publicly selling a company or asset through the tender process begins with an initial invitation, published by the CPF in international journals such as the Financial Times. This initial invitation to submit a bid lists the company or asset at its undiscounted, nominal value. Usually, investors are not found at these prices. After the initial public tender, another tender is published either at a lower price or with an invitation to investors to suggest their own valuation. The public tender makes it possible to negotiate the conditions under which the shares or asset will be sold, as well as the conditions the buyer must fulfill before the purchase can take place.

The Division for the Sale of Shares by Public Tender within the Privatization Department at the Fund is responsible for each step of the sale of every company or any shares in a company that goes through the public tender process. Davor Marijić is the Chief of this Division and oversees the process from the first decision to privatize a company with this method, to the final negotiations with the prospective investors. The Division for the Sale of Real Estate within the Privatization Department is responsible for managing and selling the real estate in the Fund's portfolio. Ivan Kovačev is the Chief of this Division and handles all issues related to the sale of the Fund's real estate.

Chart 2: Organization of Privatization Department



Source: Croatian Privatization Fund

3.5 The role of the CPF in the liquidation process

Under the Transformation Act of 1991, Croatian companies were transformed from socially-owned enterprises to state-held companies. The purpose of this Act was to create the legal conditions for the forthcoming privatization of the companies. Following the transformation process, enterprises legally became joint stock companies or limited liability companies. The Croatian government or the Privatization Fund became the owners of these companies and thereby began the process of finding other owners for them, through the various privatization models.

Because of the damage caused by the war in Croatia, a number of companies lost so much value that they were no longer able to stay solvent. The government was the legal owner of these companies (following the Transformation Act), and therefore able to make the decision to liquidate the companies that they felt were no longer able to engage in economically productive activity or to meet the payment obligations of their outstanding debts.

Since the Privatization Fund is and has been acting as a holding company for government property, their advice is usually sought when deciding to liquidate a certain company. As part of the decision making process, the appropriate individual at the Fund is asked to write a proposal for each company in their area of expertise, possibly recommending liquidation when necessary. If the government chooses to begin bankruptcy proceedings, the commercial court in whose territory the seat of the company is located has exclusive jurisdiction. Following the liquidation of state-owned companies, any remaining assets are held and managed by either the Privatization Fund or the State Office for Asset Management.

4 The State Office for Asset Management

This office is responsible for managing and maintaining the government's property and real estate, including all government buildings and facilities throughout the country as well as additional assets that are being held by the government for some special purpose. These holdings include government offices and buildings which were owned by the former government before the war, and certain assets whose ownership the government has received due to the bankruptcy or restructuring of financially weak companies. Prior to the creation of this office two years ago, the government had no way to monitor its assets and no system for recording what the government owned throughout the country. The task of figuring this out has been tremendous and still has not been completed.

The State Office for Asset Management has 27 employees, mainly lawyers and architects, and is organized into three departments: Legal Affairs, Rebuilding and Reconstructing, and Financial Affairs. At this point, the president Katarina Čop and her staff are working with officials from each municipality, and the Commercial Courts, to update and re-assess government holdings and their value. Since her office may not know if they have the ownership rights to a certain asset, it is best to check the former company's registration at the appropriate Commercial Court. The State Office for Asset Management is linked directly to the government, as is the Privatization Fund. When the

State Office sells an asset or real estate, this can be done directly through their office by public tender. The asset's ownership does not need to first be transferred to the Fund.

5 Contacting the Commercial Courts

In situations where the ownership of a company or a piece of real estate is unclear, the best and most basic sources of information are the Commercial Courts. These courts are responsible for the legal requirements of seeing a company through the liquidation process. The court administrators record and register any legal changes in the status or make-up of a company in Croatia. The Commercial Courts are located throughout Croatia, with a regional court and the Supreme Court set in Zagreb, and can be contacted at the following addresses and telephone numbers:

Table 3: Contact Information for the Commercial Courts

| Commercial Court | Address | Telephone Number |
|----------------------------------------|-------------------------|------------------|
| Bjelovar | Šet. Ivše Lebovića 42 | 043/ 244-471 |
| Dubrovnik | Dr. Ante Starčevića 67 | 020/ 357-727 |
| Karlovac | Trg Josipa Broza Tita 1 | 047/ 606-111 |
| Osijek | Zagrebačka 2 | 031/ 207-600 |
| Rijeka | Zadarska 3 | 051/ 213-211 |
| Sisak | R. Hefelea b.b. | 044/ 571-780 |
| Slavonski Brod | Trg Pobjede 13 | 035/ 217-400 |
| Split | Sukoiskanska 6 | 021/ 393-999 |
| Šibenik | Stjepana Radića 81 | 022/ 209-333 |
| Varaždin | Braće Radića 2 | 042/ 401-888 |
| Zadar | Brne Krnarutica 13 | 023/ 250-540 |
| Zagreb | Amruševa 2 | 01/ 4897-222 |
| Supreme State Commercial Court, Zagreb | Berislavićeva 11 | 01/ 4896-888 |

Source: Croatian Privatization Fund

At the Commercial Court in Karlovac, the court with jurisdiction over commercial activities in the Donji Lapac region, the President of the Privatization Council is Frane Prpić, and the other members of the Privatization Council are Ivan Brozić and Vesna Fundurulić-Perišin. They can be contacted at the above address and telephone number to provide additional information and documents relating to enterprises in this area.

Another source of information is a web-site, <http://sudreg.pravosudje.hr>, containing all of the data and information contained in Croatia's Commercial Courts. This information can be grouped into the following categories:

- basic data on a registered firm, residence, capital, etc.

- activities of a company and its object of doing business
- company members and founders
- members of management
- members of supervisory board
- legal relationships (legal documents, acts of foundation, statutes, etc.)
- data on company branches

The Court Registry website can be entered only by authorized users which have been assigned a user's name and log-in. These can be obtained through a registration process on the website.

6 Conclusions

The purpose of this report, and the objective of the research involved in its formation, is to determine a clear set of procedures for identifying the ownership of a company or its liquidated assets, and for making them available for purchase by investors. With the information presented in these pages and a certain amount of patience, the goal of making non-functioning liquidated assets productive again can definitely be met. For the purposes of FLAG's on-going efforts in this respect, solid relationships have been formed with the individuals mentioned in the report and they will continue to be of great assistance.

Appendix A: Contact Information

Croatian Privatization Fund

Ivana Lučića 6

10000 Zagreb

Corporate Governance Sector: (01) 456-9123

Privatization Sector: (01) 459-337

website: <http://www.hfp.hr>

State Office for Asset Management

Visoka 15

10000 Zagreb

phone: (01) 456-9759

fax: (01) 630-3865

email: imovinarh@vlada.hr

Commerical Court

Trg Tita Maršala 1

Karlovac

phone: (47) 606-111

website: <http://sudreg.pravosudje.hr>